IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 26013 of 2006(V)

OS.679/2002 OF PRL.MUNSIFF COURT,THRISSUR

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PETITIONERS:

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1. RAJAM VENKITESWARAN,
W/O. VENKITESWARAN, H.NO.20, WARD NO.25,
PUTHEN NADAKKAVU, THRISSUR.

2. RAMASWAMY, S/O. VENKITESWARAN,
H.NO.20, WARD NO.25, PUTHEN NADAKKAVU,
THRISSUR.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:

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1. T.B. PRADEEP, THAYYIL HOUSE,
KANIMANGALAM, THRISSUR.

2. T.B. VINOD, THAYYIL HOUSE,
KANIMANGALAM, THRISSUR.

BY ADV. SRI.RENJITH THAMPAN
SMT.P.A.ANITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 26013/2006 V

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PLAINT IN OS NO. 679/00 ON THE FILE OF THE COURT OF MUNSIFF OF THRISSUR DT. 15/03/00.

EXT.P2. COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENTS HEREIN OS NO. 679/00 ON THE FILE OF THE COURT OF MUNISFF COURT OF THRISSUR DT. 30/03/01.

EXT.P3. COPY OF THE INTERIM REPORT DT. 25/3/00 BY THE COMMISSIONER IN THE ABOVE SUIT.

EXT.P4. COPY OF THE FINAL REPORT FILED BY THE COMMISSIONER DT. 23/5/2005.

EXT.P5. COPY OF THE IA NO. 7762/05 FILED BY THE DEFENDANTS IN OS NO. 679/00 MUNSIFF COURT, THRISSUR DT. 22/08/05.

EXT.P6. COPY OF THE IA NO. 7698/05 IN IA NO. 2062/00 IN OS NO. 679/00, MUNSIFF COURT, THRISSUR BY THE PETITIONERS DT. 4/10/2005.

EXT.P7. COPY OF THE ORDER OF THE MUNSIFF COURT, THRISSUR IN IA NO. 8698/05 IN IA NO. 2062/00 IN OS NO. 679/00 DT. 5/08/06.

True copy

tga

PIUS C. KURIAKOSE, J.

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W.P.(C)No.26013 OF 2006

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DATED THIS THE 9th JULY, 2007

J U D G M E N T

Ext.P7 order passed by the learned Munsiff dismissing the plaintiffs' application for setting aside the commissioner's report and plan is under challenge in this Writ Petition initiated by the plaintiffs under Article 227 of the Constitution. Obviously, the petitioners-plaintiffs had not adduced any evidence which will substantiate their contention that the commissioner's report and plan were liable to be set aside. I do not find any warrant for setting aside Ext.P7 in the supervisory jurisdiction of this Court. However, even as I approve Ext.P7 and direct continuance of the trial of the suit, there will be a direction to the court below to permit the petitioners to adduce whatever evidence they have against the commissioner's report, i.e., in substantiation of the objections filed by them to the commissioner's report, and take a decision on the question of acceptability or otherwise of the commissioner's report and plan, even before judgment is delivered in the suit. In other words, after the entire evidence is recorded in the suit, the parties will be heard initially on the question of acceptability or otherwise of the commissioner's report and the court will give its decision on that question and thereafter only

the judgment in the suit will be delivered. If the court below comes to be convinced on the basis of the evidence adduced by the petitioners that the commissioner's report and plan are liable to be set aside, confirmation of Ext.P7 by this Court will not stand in the way of the court passing appropriate orders either appointing a fresh commission or remitting the commissioner's report to the same commissioner.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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